became permanent and pensionable employees of the defendant. The plaintiffs have relied on surmises and on expectation without any tangible legal foundation for their claim. And they also relied on what the Union felt they ought to get. I feel sorry that they should have at all brought this misconceived claim.

The plaintiffs' claim is dismissed with costs.

CHE PA BIN HASHIM & 3 ORS.

v.

THE COLLECTOR OF REVENUE, KEDAH

HIGH COURT, ALOR SETAR
DATO' K.C. VOHRAH J.
LAND REFERENCE NO. 15-17-87
10 SEPTEMBER 1992

LAND ACQUISITION: Reference under s. 38 Land Acquisition Act 1960 - Assessment of valve of house and land - Principles applicable - Comparable lots - Whether sale transaction involving comparable lot bona fide.

The applicants, the former land owners, disputed the amount of the award for the acquisation a parcel of land, Lot 757, SPK 1623, Mukim of Air Puteh, District of Pendang, Kedah measuring 5.4938 relongs in area which the Collector of Land Revenue valued at RM11,500 per relong. The collector further valued a double storey house and store on the land at RM32,700.

The applicants contend that the collector should have relied on Lot 756, the adjacent lot which was sold 4 months before the valuation, as a comparable lot rather than the properties he did take into account. The question that arose was whether the sale price of lot 756 was a fair market price.

Held:

[1] The private valuer appointed by the applicants based his calculation of the built-up area for the purpose of valuation on a description of the house and store provided by the owner. The government valuer had in fact measured the built-up area for his valuation. The applicants have not shown that the government valuer had acted on wrong principles in his calculation of the value of both the house and the store.

[2] A very relevant property which should have been used as a comparable lot, Lot 756, which was adjacent to and very close in plot size to the subject lot which was sold 4 months before the valuation date of the subject lot was not taken into account by the valuation officer.

[3] Sale transactions concerning Lot 756 showed an increase in value of 116% between

November 1980 and April 1984 which cannot be explained in the context of the dull market in the immediate neighbourhood. The Land Officer had prepared a report in 1980 to acquire Lot 756. It in reasonable to infer that a high price was paid for Lot 756 in order to artificially boost the compensation that would have been payable in respect of the land intended to be acquired.

[4] The applicants have failed to adduce evidence to show that the sale transaction in respect of Lot 756 in April 1984 was a *bona fide* transaction. The government valuer was not wrong in taking the value obtaining in November 1980 in respect of Lot 756 and the value of the neighbouring lots for guidance on the market value of the subject land.

[Application dismissed with costs. Collectors award affirmed.]

Cases refered to:
Ng Tiou Hang v. Collector of Land Revenue, Gombak [1984] 1 CLJ 350 ***(foll)***
Government of Bombay v. Merwan Moondigar AIR [1924] Bombay 161 at 163 ***(foll)***

Legislation referred to:
Land Acquisition Act 1960, ss. 8, 38

For the applicants - Shahrir bin Mohd. Noor; M/s. Jayadeva & Kamal
For the respondent - Hassan bin Lah; Legal Adviser Kedah Darulaman

JUDGMENT

K.C. VOHRAH J:
This is a reference under s. 38 of the Land Acquisition Act 1960 (the Act).

The Collector of Land Revenue made an award of RM64,189.55 for the acquisition of a parcel of land, Lot 757, SPK 1623, Mukim of Air Puteh, District of Pendang, Kedah. The land was 5.4938 relongs in area and the Collector valued it at RM11,500 per relong, the relevant date of valuation being 2 August 1984, the date of the notice under s. 8 of the Act. He valued the double storeyed house and store standing on the land at RM32,700.

The applicants in this reference, the former land owners of the land, claim that on the relevant date the market value of the land was RM18,000 per relong for the land and RM40,000 for the house.

Value of house

I shall first deal with the value of the house. The government valuer, RW1, had gone to the subject land in 1984 and had seen a double storeyed house and a store standing thereon. He tape measured the built up area for valuation and valued the house at RM31,500 and the store at RM1,200. In contrast when PW1, the private valuer (on whom the applicants relied), went to the subject land the buildings had been demolished and the man relied on the description of the double storeyed house and store by its owner (who did not give evidence in court) for his calculation of the built up area. He arrived at a different and much bigger figure for the built up area of the buildings and it was clearly an erroneous figure. Additionally the applicants have not shown that the government valuer had acted on wrong principles in his calculation of the value of both the house and the store. I therefore accept the valuation made by the government valuer of the house and store at RM 32,700.

Value of land

Comparable lots

The applicants say that the Collector should have relied on lot 756 as a comparable lot when he assessed the valued of the subject lot.

It is admitted by the government valuer, RW1, that when he valued the subject lot he did inspect lot 756 which was adjacent to the subject land. He, however, did not take into account a sale transaction in respect of the lot made on 1 April 1984 for his valuation of the subject land because he was not aware that there had been such a sale transaction involving it, the title not having been endorsed with the transfer. Instead he took into account a sale transaction in respect of the land which took place in 1980 (see R1) and he also took into account the market value of 3 lots roughly about 0.5 to 0.6 miles away from the subject lot, that is, lots 5437, 558 and 5362 where for lot 5437 in February 1984 there was a sale transaction at RM7,500 per relong, for lot 558 in March 1983 a sale transaction at RM10,000 per relong, and for lot 5362 in June 1983 a sale transaction at RM10,676 per relong.

In respect of lot 756, from the evidence adduced in the case, it was not only adjacent to the subject matter, it was also very close in plot size to the subject lot, it being 4.8 relongs and

the subject lot being 5.4 relongs. Though only a portion of lot 756, a 704/2357th share, was transacted the principle is the whole lot of land is to be valued as an undivided lot and the portion acquired valued as an undivided lot and the portion acquired valued proportionately (see *Ng Tiou Hang v. Collector of Land Revenue, Gombak* [1984] 1 CLJ 350).

What appears to be also a pertinent factor when using lot 756 as a comparable lot is the proximity of time between the relevant date of valuation of the subject lot and the date of the most recent sale transaction in respect of the compared lot, lot 756, which took place on 1 April 1984, a mere 4 months before the relevant date of valuation of the subject land.

From the foregoing it appears that a very relevant property which should have been used as a comparable lot is Lot 756 but the most recent sale transaction connected with it was not taken into account by the valuation officer. In my view the valuation by the Collector based on the opinion of the government valuer which took into account the indices of recent sale transactions in the neighbourhood but which did not have any regard to the most recent sale transaction in 1984 in respect of lot 756 must therefore now be reconsidered.

Whether sale transaction involving comparable lot bona fide

Lot 756 was valued at RM22,206 per relong on 1 April 1984. There was no boom in land prices at that time. In fact, and it is not disputed, while there was a boom in land prices in 1980 there was a slump in the property market in 1984 although as stated by RW1 the drop was not that significant in Jenun (where the subject lot and lot 756 were located) as compared to town areas. The point is that there was a drop in property prices and yet lot 756 was valued at RM22,206 per relong as compared to its 1980 value of RM10,267, an increase of 116%. RW1 stated that there was an element of speculation in respect of the last sale transaction. But the "mere fact that a parcel of land is bought by a speculator in land with the object of reselling it at a profit is no ground for disregarding the sale in compensation cases under the Land Acquisition Act" (per Mulla, J in *Government of Bombay v. Merwan Moondigar* AIR [1924] Bombay 161 at 163). In the present case the increase by 116% over 4 years does not appear to be merely speculative in nature. The question is whether the 1984 price in respect of lot 756 was a fair market price? It would therefore be necessary to look at the background history of lot 756. RW1 stated, and this was not disputed, that in 1980 the Land Office had inspected the subject lot and lot 756 and had prepared a report to acquire both the lots. He said that before that report there had not been many transactions in respect of lot 756 but starting from November 1980 there were 4 transactions touching lot 756. The evidence of the sale transactions in respect of the land showed an increase of 116% between the November 1980 transaction and the April 1984 transaction. This abnormal increase in price cannot be explained in the context of the dull market in the immediate neighbourhood; the other land transactions in the immediate neighbourhood, the ones taken into account by RW1, that is, lots 5437, 558 and 5362 were transacted at lowest at RM7500 per relong (March 1983) and at highest at RM10,676 per relong (June 1983).

The question arising that may pertinently be asked is why was there such a high price paid for land in lot 756 when it was known that it was going to be acquired? Was it not to artificially boost the compensation that would have been payable in respect of the land intended to be acquired? It is, in my view, reasonable to infer that was the reason for the purchase at that abnormally high price in 1984, assuming the purchaser in respect of a share in lot 756 was aware of the intended acquisition of the lot. On the other hand the only other reason for the purchase at such an abnormally high price could have been that the said purchaser was blissfully unaware of the exorbitant price that she had to pay for her purchase in which case the purchase price she paid was not a reflection of the market value. This purchaser was never called to explain why she paid that price. Nor was there any other evidence adduced to explain such a price.

I am aware that lot 756 was eventually acquired by the government and there is a reference by the former owners of the land under s. 38 of the Act disputing the award made by the collector. And I do not wish to say anything more in respect of lot 756 save that in respect of the applicants in the present case, I wish to reiterate, that they have failed to adduce evidence to show that the sale transaction in respect of lot 756 in April 1984 was a *bona fide* transaction.

Having considered all available evidence I have not been persuaded that the government valuer was wrong in taking the value obtaining in November 1980 in respect of comparable lot 756 and the values of the neighbouring lots for guidance on the market value of the subject land. Even if he had been aware of the 1984 sale transaction in respect of Lot 756 he could safely have given no credence to it. Coming back to the 1980 sale transaction in respect of lot 756 which RW1 took into account it must be said that lot 756 was superior in many ways on the relevant date of valuation. It was a first layer lot while the subject lot was a second layer lot and the access to the subject lot then was through lot 756. Lot 756 was some 3 to 6 feet below the road level while the subject lot was some 6 to 7 feet lower; the subject lot would have required more filling to be done to raise its level. True there were fruit trees on the subject lot but none of the applicants gave evidence as to the amount of income they derived from the land. In all the circumstances I cannot see that the Collector was wrong in accepting the valuation of the subject lot at RM11,500 per relong. The award of the Collector must stand and I would dismiss the application with costs.

DUNIA RAYA ENTERPRISE SDN. BHD.
v.
GANESAN @ MUNIANDIE A/L IRUSEN @ ERUSEN

HIGH COURT, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[CIVIL SUIT NO. 22-269-91]
10 APRIL 1992

INJUNCTION: Application for - Whether grant of injunction would require continuous supervision - Whether damages adequate remedy.

LAND LAW: Caveat against the land - Application to set aside - Whether plaintiffs interest is capable of protection by the entrance of a caveat.

By an agreement in writing dated 3 November 1989 the defendant an owner of land comprised in G.M. 68, Lot 252 Mukim Damansara (the said land) agreed to allow the plaintiff to enter the said land to excavate earth. The excavations were to be completed by 15 May 1990. The plaintiffs claim that time was extended by acquiescence and that the agreement was still alive for performance in 1991.

On 23 November 1990 the defendant entered into a written agreement to sell the whole of the said land. The purchaser filed a caveat against the said land on 27 November 1990. The plaintiff filed a caveat against the said land on 13 February 1991 and on being served with a notice to remove their caveat, filed this action seeking damages for breach of contract and an injunction to prevent the defendant from interfering with its rights under the agreement to enter the said land, excavate and transport out.

The defendant applied to set aside an order granted to the plaintiff to extend the caveat it had filed to protect its interest pending hearing of its suit.

Held:

[1] The plaintiff had no exclusive right to the possession of the land as such, only a right to enter from time to time to take something from the land.

[2] Such a right was not caveatable because it was not precisely defined. Plaintiffs caveat must be removed immediately.

[3] Specific relief is a discretionary remedy which the court will not undertake where it